



ARKANSAS JUDICIARY

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## **Rule 34. Production Of Documents And Things And Entry Upon Land For Inspection And Other Purposes.**

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure.

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

(2) The party upon whom the request has been served shall serve a written response within 30 days after the service of the request, except that a defendant must serve a response within 30 days after the service of the request upon him or within 45 days after the summons and complaint have been served upon him, whichever is longer. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(3) A party who produces documents for inspection shall (A) organize and label them to correspond with the categories in the production request or (B) produce them as kept in the usual course of business if the party seeking discovery can locate and identify the relevant records as readily as can the party who produces the documents.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for permission to enter upon land. As provided in Rule 45(b), a person not a party may be compelled to produce documents or tangible things.

Reporter's Notes to Rule 34: - 1. Rule 34 is identical to FRCP 34. Prior Arkansas law was governed by superseded Ark. Stat. Ann. 28-356 (Repl. 1962) which tracked FRCP 34 prior to the 1970 amendments thereto. Under prior Arkansas law, a party seeking the production of documents, etc., was required to show good cause and obtain a court order to permit same. Under this and FRCP 34, the party seeking discovery need only serve a request upon opposing counsel. Should the opposition refuse to produce the document or thing requested, the party seeking discovery must move for an order compelling the production of the item. Thus, unless documents are produced by agreement, a hearing is still required.

2. Rule 34 and FRCP 34 omit any reference to privileged matter. Although this particular rule does not specifically preclude the production and inspecting of privileged matters, Rule

26(b)(1) makes it quite clear that matters which are deemed privileged are beyond the scope of discovery.

Addition to Reporter's Notes, 1997 Amendment: - The first and second sentences of the second paragraph of Rule 34(b) have been amended to track Rule 33(b)(3). In accordance with the prior version of Rule 34(b), the court may shorten or lengthen the time for responding to requests for production. New language expressly permits the parties to extend or shorten the response time by written agreement, a modification in discovery procedures that is permissible under Rule 29.

Addition to Reporter's Notes, 1999 Amendment: - The first and second paragraphs of subdivision (b) have been numbered and a new paragraph (3) added. The fourth sentence of the second paragraph has been amended to require a party who objects to part of a request for production to permit inspection with respect to the unobjectionable portions. The corresponding federal rule was so amended in 1993. A similar requirement for answers to interrogatories appears in Rule 33(b)(1).

The new third paragraph, based on Federal Rule 34(b), provides that a party from whom production is sought must (1) organize and label the documents in accordance with the categories set out in the production request, or (2) produce them as kept in the usual course of business. However, the second option is available only if "the party seeking discovery can locate and identify the relevant documents as readily as can the party who produces them." This requirement is intended to eliminate a problem that has arisen under the federal rule, which appears to give the producing party the right to produce records as kept in the usual course of business even though the party seeking discovery would be forced to sift through a jumble of documents in order to find those that are responsive to the production request. A similar requirement has been added to Rule 33(d), which allows the production of business records in response to interrogatories.

Addition to Reporter's Notes, 2010 Amendment: Subdivision (c) has been amended to reflect the 2010 amendment to Rule 45(b), which allows subpoenas for the production of books, papers, documents, or tangible things without a related appearance at a deposition, hearing, or trial.

### **History Text:**

History. Amended November 18, 1996, effective March 1, 1997; amended January 13, 1997, effective March 1, 1997; amended January 28, 1999

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

V. Depositions and Discovery

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